



# California Regional Water Quality Control Board

## San Diego Region

Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb9/>  
9174 Sky Park Court, Suite 100, San Diego, California 92123  
Phone (858) 467-2952 • FAX (858) 571-6972



Gray Davis  
Governor

August 2, 2002

CERTIFIED-RETURN RECEIPT REQUESTED  
7099 3400 0017 1547 4667

Gennaro Palone  
Palone Brothers Investments  
22961 Arroyo Vista  
Rancho Santa Margarita, CA 92688

File No.: 10-008050.02

Dear Mr. Palone:

**COMPLAINT NO. R9-2002-0196 FOR ADMINISTRATIVE CIVIL LIABILITY FOR  
FAILURE TO PAY ANNUAL STORM WATER FEES UNDER CALIFORNIA WATER  
CODE (CWC) SECTION 13260**

Enclosed find Complaint No. R9-2002-0196 for Administrative Civil Liability for \$570 for failure to pay annual storm water fees in violations of CWC 13260.

Be aware that if Palone Brothers Investments intends to waive its right to a public hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board), you or an authorized agent must sign and return the enclosed waiver form with a cashier's check for the amount of civil liability indicated in the complaint by 5:00 P.M., Tuesday, August 20, 2002. Waiver of the hearing constitutes admission of the validity of the allegation of violations in this Complaint and acceptance of the assessment of civil liability in the amount of \$570 as set forth in the Complaint.

If Palone Brothers Investments does not elect to waive its right to a hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on September 11, 2002 at the Regional Board Meeting Room, 9174 Sky Park Court, Suite 100, San Diego, California. The meeting is scheduled to begin at 9:00 a.m. In order for the Regional Board to fully consider any argument on your behalf, you should submit twenty copies of all documents, including exhibits, you intend to provide to the Regional Board by August 28, 2002 as indicated in the enclosed *Submittal of Written Information Procedures*. Copies of material submitted will be forwarded to the Regional Board. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.

***California Environmental Protection Agency***

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.*

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Mr. Palone

- 2 -

August 2, 2002

Please contact Vicente Rodriguez of my staff at (858) 627-3940 or via e-mail at rodrv@rb9.swrcb.ca.gov if you have any questions concerning this matter.

Respectfully,



JOHN H. ROBERTUS  
Executive Officer

JHR:mpm:mja:vrr

enclosures:    1.    ACL Complaint No. R9-2002-0196  
                     2.    Waiver of Hearing Form  
                     3.    Submittal of Written Information Procedures  
                     4.    Hearing Procedures

cc w/enclosure:    Mr. John Richards, Esq., SWRCB  
                         P.O. Box 100, Sacramento, CA 95812

V: (FY01) 102897  
E: (ACP) 54932

WDID: 9 30S308050

Palone Brothers Transmittal Letter Complaint No. R9-2002-0196 [mpm].doc

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

In the Matter of	)	
	)	
Gennaro Palone	)	Complaint No. R9-2002-0196
Palone Brothers Investments	)	For
22961 Arroyo Vista	)	Administrative Civil Liability
Rancho Santa Margarita, CA 92688	)	
_____	)	

**YOU ARE HEREBY GIVEN NOTICE THAT:**

- 1) Palone Brothers Investments is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), may impose liability under Section 13261 (a) and (b) of the California Water Code.
- 2) If Palone Brothers Investments intends to waive its right to a public hearing before the Regional Board, an authorized agent must sign and return the enclosed waiver form with a cashier's check for the amount of \$570 by 5:00 P.M., Tuesday, August 20, 2002.
- 3) A public hearing on this matter has been scheduled at the Regional Board meeting on

**September 11, 2002,  
at the Regional Board Meeting Room,  
9174 Sky Park Court, Suite 100, San Diego, California.**

- 4) The meeting is scheduled to begin at 9:00 a.m. A copy of the agenda for the September meeting, which provides information pertaining to submittal of information and hearing procedures, will be sent to you under separate cover toward the end of August 2002.
- 5) At the hearing, Palone Brothers Investments will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board.
- 6) At the hearing, the Regional Board will determine the validity of the allegations contained herein, and if the allegations are found to be true, will consider whether or not to assess civil liability in the amount proposed by this complaint, or in some other amount. The Regional Board may refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation).

**ALLEGATIONS**

- 7) Palone Brothers Investments is alleged to have violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board). The outstanding fees total \$250 for the facility located at 30142 Avenida de las Banderas, Rancho Santa Margarita.
- 8) The following facts are the basis for the alleged violations in this matter:
- 9) Waste discharge requirements for discharges of storm water associated with construction activities have been issued to Palone Brothers Investments and an annual storm water fee has been assessed accordingly. Palone Brothers Investments was sent the following invoices:
  - a) Invoice No. 36601 for the amount of \$250 sent Feb. 1 and due March 3, 2002 for Fiscal Year 2001 – 2002 (FY 2001)
    - i) First late notice sent on May 29, 2002
    - ii) Second late notice sent on July 12, 2002
- 10) The violation for non-payment is deemed to have occurred for a total of 150 days based on the following days:

Fiscal Year 2001-2002 from March 3, 2002 to July 31, 2002, or 150 days,
- 11) State Board records indicate that Palone Brothers Investments has failed to make payment in response to the invoices and notices.
- 12) On April 24, 2002, the Regional Board sent Palone Brothers Investments a staff enforcement letter that noted the outstanding annual fee and Palone Brothers Investments that failure to pay required annual fees is a violation of provisions of the California Water Code and subject to Administrative Civil Liability Complaint assessing monetary penalties.

**MAXIMUM ACL**

- 13) Pursuant to Section 13261(b), the total maximum assessment for Palone Brothers Investments is civilly liable is \$150,000 (\$1,000 for each day of violation) for the violation cited above.

Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy, all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.

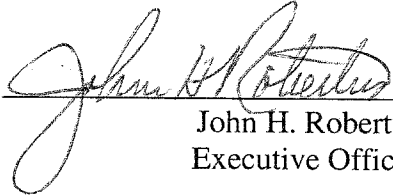
Therefore, the monetary liabilities should be calculated to negate any economic benefit realized by the discharger as a result of the violation. While the fees have remained outstanding, the discharger has continued to enjoy the privilege of discharging waste. During this time, other dischargers have paid the required fees. The discharger has gained an economic benefit in the amount of the fee (\$250) and interest (approximately \$10, assuming 10% per year) which might have accrued on that amount. Therefore, the proposed civil liability shall be within the range of \$560 and \$150,000.

**PROPOSED CIVIL LIABILITY**

- 14) The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors specified in Section 13367, economic savings, as well as the maximum civil liability that the Regional Board may assess. **Civil liability should be imposed on Palone Brothers Investments by the Regional Board in the amount of \$570 for the violations cited above.**
- 15) The proposed complaint (\$570) is a separate amount and does not include the amount due (\$250) for payment of the delinquent annual storm water fees
- 16) The Regional Board costs for investigating this incident were approximately \$640.

Dated this 2<sup>nd</sup> day of August, 2002

By:



John H. Robertus  
Executive Officer



# California Regional Water Quality Control Board

## San Diego Region

Winston H. Hickox  
Secretary for  
Environmental  
Protection

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Gray Davis  
Governor

### WAIVER OF RIGHT TO A HEARING

#### In the Matter Of:

Gennaro Palone  
Palone Brothers Investments  
22961 Arroyo Vista  
Rancho Santa Margarita, CA 92688

Administrative Civil Liability  
Complaint No. R9-2002-0196  
**\$570**

By signing below, I agree to waive my right to a hearing before the San Diego Regional Water Quality Control Board with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Palone Brothers Public Hearing Waiver R9-2002-0196.doc

#### California Environmental Protection Agency

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.*

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### SUBMITTAL OF WRITTEN INFORMATION PROCEDURES AND OTHER IMPORTANT DATES FOR THE SEPTEMBER 11, 2002 REGIONAL BOARD MEETING

The Regional Board requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the Regional Board has the opportunity to fully study and consider written material, comments should be received in the Regional Board's office no later than 5:00 p.m. on **Wednesday, August 28, 2002**, and should indicate the agenda item to which it is applicable.

If the submitted written material is more than 5 pages or contains foldouts, color graphics, maps, etc., **20 copies** must be submitted for distribution to the Regional Board members and staff. Written material submitted after 5:00 p.m. on **Wednesday, September 4, 2002** will not be provided to the Regional Board members and will not be considered by the Regional Board. Comments on this agenda item will be accepted by e-mail subject to the same conditions set forth for other written submissions as long as the total submittal (including attachments) does not exceed five printed pages in length. E-mail should be submitted to [rbagenda@rb9.swrcb.ca.gov](mailto:rbagenda@rb9.swrcb.ca.gov).

Pursuant to Title 23, California Code of Regulations, Section 648.2, the Regional Board may refuse to admit written testimony into evidence if it is not submitted to the Regional Board in a timely manner, unless the proponent can demonstrate why he or she was unable to submit the material on time or that compliance with the deadline would create an unreasonable hardship.

#### HEARING PROCEDURES

The hearing procedures that will be followed by the Regional Board are enclosed for your review. Hearings before the Regional Board are normally conducted using procedures that do not include cross-examination. Parties requesting use of more formal procedures must do so in accord with the directions in the hearing procedures. Any such request, together with supporting material, must be received in the Regional Board's office no later than 5:00 p.m. on **Wednesday, August 28, 2002**.

#### WAIVER OF HEARING

You may waive your right to a hearing. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount set forth in the Complaint. If you wish to waive the right to a hearing, an authorized agent must sign and return the enclosed waiver form by 5:00 P.M., Tuesday, August 20, 2002.

Important Dates for 9-11-02.doc

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### C. HEARING PROCEDURES

Hearings before the San Diego Regional Board are not conducted pursuant to Chapter 5 of the California Administrative Procedure Act, commencing with Section 11500 of the Government Code. Regulations governing the procedures of the regional boards are codified in Chapter 1.5, commencing with Section 647, of the State Water Resources Control Board regulations in Division 3 of Title 23 of the California Code of Regulations.

Testimony and comments presented at hearings need not conform to the technical rules of evidence provided that the testimony and comments are reasonably relevant to the issues before the Board. Testimony or comments that are not reasonably relevant, or that are repetitious, will be excluded. Cross-examination may be allowed by the Chairman as necessary for the Board to evaluate the credibility of factual evidence or the opinions of experts. Video taped testimony by witnesses who are not present at the hearing will not be accepted unless such testimony was subject to cross-examination by all designated parties<sup>1</sup>.

Pursuant to Government Code § 11445.20, the Board will use an informal hearing procedure, which does not include the right of cross-examination. Failure to make a timely objection to the use of an informal procedure, in accord with the directions below, will constitute consent to the informal hearing (See Title 23, California Code of Regulations, Section 648.7). Even with a timely objection, an informal procedure may be used under the circumstances identified in Government Code § 11445.20 (a) (b) or (d).

For formal hearings, designated parties must submit witness testimony prior to the hearing date. During the formal hearing, witnesses will be allowed a limited time to orally summarize the pertinent points of their testimony. Designated parties requesting a formal hearing must submit 20 copies of the following information to the Regional Board. This information must be received in the Regional Board's Office by the date indicated on the first page of this Agenda Notice for the submission of a request for formal hearing:

- Witness testimony;
- The name of each proposed witness and the order in which witnesses will be called;
- A description/summary of what each witness' testimony is intended to prove; and,
- Identification of material factual issues in the dispute.

When a hearing is conducted using formal procedures, participants will be determined to be either "designated parties" or other "interested persons". Only designated parties will have the right to cross-examine witnesses. Interested persons do not have a right to cross-examination, but may ask the Regional Board to clarify testimony.

Designated parties automatically include the Regional Board and any person to whom an order is addressed (i.e., the Discharger(s)). All other persons wishing to testify or provide comments at a formal hearing are interested persons. An interested person may request status as a designated party for purposes of the formal hearing. A request must be received in the Regional Board's Office by the date indicated on the first page of this Agenda Notice for the submission of a request for formal hearing. The request must explain the

<sup>1</sup> This does not preclude the use of videotape to present graphic images, provided that the person who took the videotape is available for questioning; this is intended to apply to spoken testimony of witnesses who are not available for cross-examination at the hearing.

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basis for status as a designated party and, in particular, how the person is directly affected by the possible actions of the Regional Board.

For any hearing (formal or informal) the Chair will allocate time for each party to present testimony and comments and to question other parties if appropriate. Interested parties will generally be given 3 minutes for their comments. Where speakers can be grouped by affiliation or interest, such groups will be asked to select a spokesperson. The Chair may allocate additional time for rebuttal or for a closing statement. Time may be limited due to the number of persons wishing to speak on an item, or the number of items on the Board's agenda, or for other reasons.

All persons testifying must state their name, address, affiliation, and whether they have taken the oath before testifying. The order of testimony for hearings generally will be as follows, unless modified by the Regional Board Chair:

- Testimony\* of Regional Board staff
- Testimony\* of discharger
- Testimony\* of other designated parties
- Testimony\* of interested persons
- Closing statement by designated parties other than discharger
- Closing statement by discharger
- Closing statement by staff
- Recommendation by Executive Officer (as appropriate)
- Close public hearing
- Deliberation and voting by Regional Board

\*includes cross examination if formal hearing

Closing statements shall be for the purpose of summarization and rebuttal, and are not to be used to introduce new evidence or testimony, or to restate direct testimony. After considering evidence, testimony, and comments, the Regional Board may choose to adopt an order regarding a proposed agenda item. All Regional Board files, exhibits, and agenda material pertaining to items on the agenda are made a part of the record. Persons wishing to introduce item exhibits (i.e., maps, charts, photographs) must leave them with the Regional Board's Executive Assistant and must provide sufficient copies for distribution to the Regional Board, designated parties, and interested persons. Photographs or slides of large exhibits are acceptable.